No. 01-1380

(3)

Supreme Court, U.S.
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In The
Supreme Court of the United States

JAMES T. SINYARD and MONIQUE T. SINYARD,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITIONERS' REPLY TO BRIEF FOR THE RESPONDENT IN OPPOSITION

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PETITIONERS' REPLY TO BRIEF FOR THE RESPONDENT IN OPPOSITION

Petitioners James T. Sinyard and Monique T. Sinyard (collectively "Sinyards") respectfully submit this Reply pursuant to Rule 15.6 of the Rules of Supreme Court of the United States to address the new points raised by Respondent Commissioner of Internal Revenue ("Commissioner") in its opposition to the Sinyards' Petition for Writ of Certiorari.

I. THE PAYMENT OF ADEA ATTORNEYS' FEES DOES NOT CONSTITUTE THE SATISFACTION OF ANOTHER PARTY'S OBLIGATIONS UNDER *OLD COLONY*.

The Commissioner incorrectly contends the attorneys' fees paid to class counsel under the Age Discrimination in Employment Act ("ADEA") are taxable as a discharge of the Sinyards' obligation under *Old Colony Trust Co. v. Commissioner*, 279 U.S. 716 (1929). Opp. 6-7. This would be an unprecedented extension of the *Old Colony* doctrine.

First, *Old Colony* does not apply because the fee provision incorporated in the ADEA imposes an independent obligation on defendant to pay attorneys' fees to plaintiff's counsel that exists wholly separate and apart from any obligation that may exist on the part of plaintiff. Pet. App. 13-14. Thus, IDS Financial Services, Inc., IDS Life Insurance Company, and IDS Financial Corporation (collectively "IDS") paid the attorneys' fees to satisfy their own statutorily imposed obligations under the ADEA. *Id.*

Second, Winthrop & Weinstine, P.A., retained no separate right to obtain payment of attorneys' fees under the ADEA from the Sinyards.[1] Indeed, class counsel was

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[1] Notwithstanding the Commissioner's suggestion to the contrary, the Sinyards would point out that Winthrop & Weinstine, P.A. ("Winthrop & Weinstine"), was not paid the amount of attorneys' fees

(Continued on following page)

required to release any and all claims for attorneys' fees as a term of the court-approved settlement. Record at 55 & 411-420. Moreover, apart from any release, the fee provision incorporated in the ADEA has been held to provide the exclusive source of the payment of attorney's fees. *See, e.g., Harrington v. Empire Constr. Co.*, 167 F.2d 389, 392 (4th Cir. 1948); *United Slate, Tile & Composition Roofers, Damp & Waterproof Workers Ass'n, Local No. 307 v. G&M Roofing Sheet Metal Co.*, 732 F.2d 495, 504 (6th Cir. 1985).

Thus, this is not a case in which IDS satisfied the Sinyards' obligation so as to justify the application of the *Old Colony* doctrine. Pet. App. 13-14.

II. THE COURTS OF APPEALS HAVE APPLIED STATE ATTORNEYS' LIEN LAW TO DETERMINE THE TAXATION OF ATTORNEYS' FEES RECOVERED UNDER FEDERAL STATUTES SUCH AS THE ADEA.

The Commissioner argues the courts of appeals' inconsistent application of state attorneys' lien laws to determine the taxation of attorneys' fees has occurred only in cases involving the recovery of attorneys' fees under state law claims rather than federal law claims. Opp. 7-8. In fact, the courts of appeals have applied state attorneys' lien law indiscriminately, including cases where attorneys'

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owed under the contingent fee agreement. The attorneys' fees that class counsel actually received under the court-approved settlement of the ADEA claims were actually lower than the attorneys' fees provided for under the terms of the contingent fee agreements. Record at 48-49, 384-420, 422-423, & 425-434. For example, while the contingent fee agreements would have provided for the payment of attorneys' fees in the amount of one-third of any recovery, the Commissioner's brief demonstrates that Winthrop & Weinstine actually received significantly less than a third of the sums recovered by the Sinyards. Opp. 3.

fees had been paid pursuant to federal law. For example, in *Kenseth v. Commissioner*, 259 F.3d 881 (7th Cir. 2001) – a case cited by the Commissioner in support of its argument, Opp. 7, and which reflects the United States Tax Court's deep division over this issue, *see* 114 T.C. 399 (2000) – the Seventh Circuit applied Wisconsin attorneys' lien law to hold that attorneys' fees recovered in an ADEA lawsuit should be taxable to the plaintiff-employees as gross income. *Kenseth*, 259 F.3d at 883-85.

In the instant case, while recognizing the Fifth Circuit's interpretation of the applicable state attorneys' lien law in *Cotnam v. Commissioner*, 263 F.2d 119 (5th Cir. 1959), the Ninth Circuit's majority simply "declined" to apply the *Cotnam* interpretation of Alabama law and instead substituted its own interpretation of that state's attorneys' lien law. Pet. App. 8 & 11 n. 1.

Lastly, the Commissioner's contention that the Supreme Court should reject the Sinyards' petition for the same reasons set forth in their brief in *Benci-Woodward v. Commissioner*, 219 F.3d 941 (9th Cir. 2000), *cert. denied*, 531 U.S. 1112 (2001), seems misplaced given the Ninth Circuit's majority failed to adhere to its own precedent in *Benci-Woodward* in the instant case. Pet. App. 11 n. 1.

III. THE SUPREME COURT SHOULD RESOLVE THE CONFLICT AMONG THE COURTS OF APPEALS TO HARMONIZE THE APPLICATION OF FEDERAL LAW.

The Commissioner incorrectly argues "Petitioner complains that taxation of the proceeds received by successful ADEA plaintiffs under the AMT [i.e. Alternative Minimum Tax] defeats Congress' purpose to make victims of age discrimination whole." Opp. 9. In fact, the Sinyards' Petition contains no mention of the AMT. The issues raised by the Sinyards in their Petition focus on the split among the courts of appeals with respect to the taxation of

attorneys' fees and the inconsistent application of the anticipatory assignment of income doctrine.

However, the Commissioner's application of the AMT, as sanctioned by several courts of appeals, clearly creates a conflict between the federal income tax laws (which contain the AMT) and the federal employment discrimination laws such as the ADEA. The split among the courts of appeals has created a conflict among these federal statutes that undermines the purposes of the federal employment discrimination statutes as well as resulting in unintended and inequitable results. Pet. App. 14 ("The taxation of a plaintiff of attorney's fees, combined with the operation of the Alternative Minimum Tax, sometimes leaves a victorious civil rights plaintiff with a net after-tax loss."). The Supreme Court must resolve this conflict in the application of federal statutes.

Finally, the Commissioner has incorrectly intimated the Supreme Court has already addressed the taxation of attorneys' fees recovered under the ADEA in *Commissioner v. Schleier*, 515 U.S. 323 (1995). Opp. 9. In fact, the only issue in *Schleier* involved whether back pay and liquidated damages recovered under the ADEA could be included in gross income. *Id.* at 524-25. In *Schleier*, the Supreme Court did not hold, and the Commissioner did not contend, that reasonable attorneys' fees paid by defendant to plaintiff's counsel "in addition" to any compensation recovered by plaintiff should be included in plaintiff's gross income.

CONCLUSION

For the above-stated reasons, as well as for those reasons previously set forth in their initial Petition, the Sinyards respectfully request the Supreme Court to issue a Writ of Certiorari to review the Ninth Circuit's decision in this case in order to resolve the split among the courts

of appeals that has resulted in the unequal treatment of taxpayers due to the patchwork application of state law rather than a uniform federal rule; clarify the judicially created doctrines of assignment of income and satisfaction of obligations by third parties; and ensure the federal income tax laws are properly applied so as to eliminate any further interference with the purposes and intent of federal employment discrimination statutes such as the ADEA.

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Respectfully submitted,

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